



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 11, 1996

Mr. Kevin Pagan
Assistant City Attorney
P.O. Box 220
McAllen, Texas 78505-220

OR96-1862

Dear Mr. Pagan:

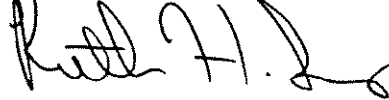
You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 102021.

The City of McAllen (the "city") received a subpoena for "any and all records pertaining to the automobile accident that occurred on July 18, 1994 in the 2000 block of West Harvey in McAllen, Texas (Loc.No. 94-44881), including but not limited to investigation, photographs, statements and reports." You state that the requested information is excepted from required public disclosure pursuant to section 552.108 of the Government Code.

Initially, we note that the subpoena was addressed to the custodian of records for the McAllen Police Department in connection with a civil case that is currently pending before a United States District Court of Texas. Pursuant to the Texas Rules of Civil Procedure, this court is the appropriate authority before whom to make your arguments as to why the city contends it is not required to produce the subpoenaed documents. No provision of the Open Records Act controls a litigant's discovery rights in civil litigation. Attorney General Opinion JM-1048 (1989). Section 552.005 of the Government Code provides that the Open Records Act does not affect the scope of discovery under the Texas Rules of Civil Procedure. *See id.* (Open Records Act differs in purpose from statutes and procedural rules providing for discovery in judicial proceedings); *see also* Letter Opinion No. 95-025 (1995) (Open Records Act not applicable to production of information pursuant to a subpoena under chapter 24 of the Code of Criminal Procedure). Therefore, we are unable to issue a decision as to whether the requested documents must be disclosed pursuant to the subpoena.

If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy", with a stylized flourish at the end.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/SAB/ch

Ref.: ID# 102021

Enclosures: Submitted documents

cc: Ms. Liz Elliot
700 North St. Mary's Street
McAllen, Texas 78505
(w/o enclosures)